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A PROFESSIONAL LAW CORPORATION

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J. THOMAS SUSICH
STEVEN E. TACKES
SANDRA-MAE PICKENS

510 W. FOURTH STREET
CARSON CITY, NEVADA
89703

TELEPHONE
(775) 882-1311
(775) 588-6448

FAX (775) 882-0257
INTERNET
thofirm@advocacy.net

00-247

November 30, 2000

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FCC MAIL ROOM

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
Office of the Secretary
445-12th St., SW, RM TW-204B
Washington, DC 20554

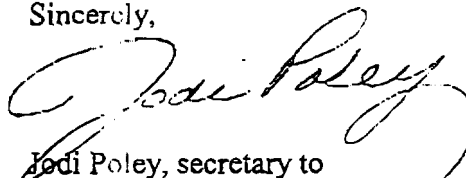
Re: Petition for Preemption of Jurisdiction
Virtual Hipster Corporation

Dear Ms. Salas:

Enclosed for filing please find an original and nine copies of the above-referenced documents. Kindly file this document and return a file-stamped copy to me in the envelope provided.

Thank you in advance for your courtesy and cooperation in this matter.

Sincerely,



Jodi Poley, secretary to
Steven E. Tackes, Esq.

/jp

12/07/00

12:06

C.C. COMMUNICATIONS → 202 296 8893

NO. 222

V. 222

Before the
Federal Communications Commission

In the Matter of

) Docket Number 0000-247

) Virtual Hipster Corporation

) Petition for Preemption of

) Jurisdiction of the

) Public Utilities Commission of Nevada

) Pursuant to 47 U.S.C. § 252(e)(5)

Petition for Preemption of Jurisdiction of the

Public Utilities Commission of Nevada

Pursuant to 47 U.S.C. § 252(e)(5)

Virtual Hipster Corporation ("VH" or "Petitioner") herewith petitions the Federal Communications Commission ("Commission") for preemption of jurisdiction of the Public Utilities Commission of Nevada ("PUCN") pursuant to 47 U.S.C. § 252(e)(5) and in accordance with the Commission's rules, 47 C.F.R. § 51.801(a) and § 51.803. The PUCN issued an order, attached as Exhibit A, on November 9, 2000, denying a petition for arbitration filed by VH based on lack of jurisdiction over the incumbent local exchange carrier, Churchill County Telephone Company d/b/a CC Communications, Inc. ("CCC").¹ With this petition, VH respectfully requests a finding by the Commission that the denial by the PUCN sufficiently satisfies the condition under 47 U.S.C. § 252(e)(5), thereby requiring preemption of the state commission's jurisdiction and assumption of the responsibility of the state commission. If the Commission agrees and grants this petition, VH intends to subsequently file a petition for arbitration under 47

¹ CCC is a county-owned and operated local exchange carrier organized as an enterprise fund.

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1 C.F.R § 51.807 for resolution of any issues that continue to be matters of dispute preventing
2 execution of an interconnection agreement between VH and CCC.

3 Communications regarding this petition should be directed to:

4 1. Shad Nygren, President
Virtual Hipster Corporation
5 1221 Lovelock Hwy
6 Fallon, Nevada 89406

7 2. Steven E. Tackes, Esq.
Crowell, Susich, Owen & Tackes, Ltd.
8 510 West Fourth Street
Carson City, Nevada 89702

9 Telephone: 775-882-1311
10 Fax: 775-882-0257
11 Email: stackes@advocacy.net

12 and

13 3. Larry Blank, PhD
TAHOEconomics, LLC
14 (consultant to Virtual Hipster Corporation)
PO Box 3722
15 Carson City, Nevada 89702

16 Telephone: 775-884-0647
17 Fax: 775-884-2845
18 Email: LBlankT1@aol.com

19 Relevant Factual History

20 On August 6, 1997, and again on September 8, 1997, VH requested interconnection with
21 CCC and requested rates for both interconnection and collocation. On October 23, 1997, CCC
22 refused to allow interconnection on the basis that VH did not yet have a Nevada Certificate of
23 Public Convenience and Necessity as a competitive provider of telecommunications services.
24 Such refusal was in direct violation of the Telecommunications Act of 1996, and the FCC First
25 Report and Order (CC Docket 96-98, issued August 8, 1996) which states:

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1 "For example, a party may not refuse to negotiate with a requesting
2 telecommunications carrier, and a party may not condition negotiation on a carrier
3 first obtaining state certification." [para 154]

4 This was pointed out to CCC and CCC was urged to proceed.

5 On November 13, 1997, VH again requested interconnection and unbundled network
6 element rates (UNEs) from CCC. CCC again objected and refused to negotiate interconnection.
7 This time CCC claimed that it had a rural exemption, which CCC argued, until lifted, prevented
8 competition from occurring in its service territory. VH then petitioned the PUCN to lift the
9 exemption pursuant to 47 USC 251(f). [Docket No. 97-11017] As such, CCC was then required
10 to "prove to the state commission that they should continue to be exempt..." [FCC Order CC 96-
11 98, August 8, 1996, para 1263] Until March 6, 1998, CCC refused to negotiate or otherwise
12 allow interconnection. CCC argued that the PUCN did not have jurisdiction and also
13 substantively opposed the Petition. Ultimately, at the hearing scheduled by the PUCN and as a
14 way to settle the matter without a finding of PUCN jurisdiction, CCC backed down from its
15 opposition by withdrawing its claims of rural exemption and agreeing to allow interconnection.²
16 VH withdrew its petition before the PUCN but by mutual agreement was allowed to unilaterally
17 restart the section 252 clock at any time. [see Exhibit B, attached]

18 Failure to negotiate an interconnection agreement after a lengthy period prompted VH to
19 restart the clock and file a petition for arbitration, pursuant to 47 U.S.C. § 252(b), with the PUCN
20 on October 5, 2000. On November 9, 2000, the Public Utilities Commission of Nevada issued
21 an order denying the petition for arbitration due to lack of jurisdiction over the incumbent local
22 exchange carrier, CCC. Said Order is attached hereto as Exhibit A.

23 The foregoing facts are supported by the affidavit of Steven Tackes, attached as Exhibit

24 C.

25 ² As the transcript from the hearing sets forth, CCC agreed to abandon its claim of the rural exemption and agreed to provide unbundled network element rates within one year, and VH agreed to withdraw its Petition. 97-11017, Transcript, March 6, 1998 (Attached as Exhibit B to this pleading).

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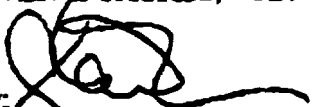
VH requests that this Commission issue its Order preempting the jurisdiction of the Public Utilities Commission of Nevada ("PUCN") pursuant to 47 U.S.C. § 252(e)(5) and in accordance with the Commission's rules, 47 C.F.R. § 51.801(a) and § 51.803, so that VH can arbitrate interconnection with Churchill County Telephone Company d/b/a CC Communications, Inc. Without such action by this Commission, the refusals of CCC to provide interconnection on fair and reasonable terms will prevent VH from providing competitive telecommunications services as permitted and encouraged by the Telecommunications Act of 1996.

Respectfully submitted this 30th day of November, 2000.

VIRTUAL HIPSTER CORPORATION
SHAD NYGREN, PRESIDENT

1221 Lovelock Hwy
Fallon, Nevada 89406

CROWELL, SUSICH,
OWEN & TACKES, LTD.

By: 
STEVEN E. TACKES, ESQ
Nevada Bar No. 1027
510 W. 4th St.
Carson City, Nevada 89703
775-882-1311

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C.C. COMMUNICATIONS → 202 296 8893

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**CERTIFICATE OF SERVICE
BY NEXT DAY DELIVERY**

I certify that I am an employee of Crowell, Susich, Owen & Tackes, Ltd., and that on the 30th day of November, 2000, I placed a true copy of the PETITION FOR ARBITRATION on behalf of VIRTUAL HIPSTER with Federal Express for next day delivery and/or Hand Delivered to:

Crystal Jackson, Secretary
Public Utilities Commission
1150 E. William St.
Carson City, NV 89701-3109
(HAND DELIVERED)

Jeff Parker, Esq.
Commission Counsel
Public Utilities Commission
1150 E. William St.
Carson City, NV 89701-3109
(HAND DELIVERED)

Churchill County Telephone Co.
c/o Don Mello, General Manager
77 N. Maine Street
Fallon, NV 89407
(VIA FEDERAL EXPRESS)

Kristin McMillan, Esq.
Hale, Lanc, Peck, et al.
2300 W. Sahara Ave.
Eighth Floor, Box 8
Las Vegas, NV 89102
(VIA FEDERAL EXPRESS)


Jodi Poley, an employee of
Crowell, Susich, Owen & Tackes, Ltd.

BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA

In Re Petition of VIRTUAL HIPSTER CORPORATION)
for arbitration to establish all components of an)
Interconnection Agreement with Churchill County Telephone)
Company d/b/a CC Communications, Inc., or alternatively, an)
Order declining request based on jurisdictional uncertainty.)

Docket No. 00-10009

At a general session of the Public Utilities
Commission of Nevada, held at its offices on
November 9, 2000.

PRESENT: Chairman Donald L. Soderberg
Commissioner Richard M. McIntire
Commission Secretary Crystal Jackson

ORDER

The Public Utilities Commission of Nevada ("Commission") makes the following
findings of fact and conclusions of law:

1. On October 5, 2000, Virtual Hipster Corporation ("Petitioner" or "Virtual Hipster") filed a petition, designated as Docket No. 00-10009, with the Commission. Petitioner requested arbitration by the Commission of all components of an interconnection agreement between Petitioner and Churchill County Telephone Company d/b/a CC Communications, Inc. ("CCC") pursuant to Section 252(b) of the Telecommunications Act of 1996 ("TA 96"). In the alternative, Petitioner requested that the Commission issue an Order declining to arbitrate this agreement, based on the jurisdictional uncertainty associated with CCC's status as a county-owned telephone company.
2. The Commission issued a public notice of this petition in accordance with State law and

Docket No. 00-10009

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the Commission's Rules of Practice and Procedure. The Regulatory Operations Staff of the Commission ("Staff") participated in this petition as a matter of right.

3. On October 26, 2000, Staff filed its comments and recommendations with respect to this petition. Staff stated that the Commission has no jurisdiction over the terms or conditions of service or rates imposed by CCC. The Churchill County Commission has exclusive jurisdiction over such matters. Staff recommended that the Commission issue an Order declining the request for arbitration of an interconnection agreement based on the Commission's lack of jurisdiction over CCC.
4. CCC filed its answer to Virtual Hipster's petition on October 30, 2000. In its answer, CCC stated it was consenting to the Commission's ability to arbitrate this interconnection agreement, although it was not consenting to the Commission's jurisdiction over the general operations, rates or status of CCC.
5. In its petition, Virtual Hipster requested that the Commission issue an Order declining its request for arbitration based on jurisdictional uncertainty. Such an Order would allow Virtual Hipster to file a request for arbitration, pursuant to 47 U.S.C. Section 252 (e)(5), with the Federal Communications Commission.
6. A duly-noticed prehearing conference was held on November 1, 2000, at which time the parties were afforded the opportunity to supplement the arguments made in their filings.
7. Upon consideration of the arguments raised, the Commission believes it should decline Virtual Hipster's request to arbitrate an interconnection agreement with CCC, based on the Commission's lack of jurisdiction over CCC, including lack of jurisdiction over CCC's rates or terms and conditions of service. Any interconnection agreement would

Docket No. 00-10009

Page 3

necessarily involve a determination of rates, terms, and conditions. A determination that this Commission lacks jurisdiction over this matter allows Virtual Hipster Corporation to proceed to the Federal Communications Commission for arbitration of an interconnection agreement.

Therefore, based on the foregoing findings and conclusions, it is hereby ORDERED that:

1. The petition filed by Virtual Hipster Corporation, identified as Docket No. 00-10009, in which Petitioner has requested that the Commission arbitrate an interconnection agreement between Virtual Hipster Corporation and Churchill County Telephone Company d/b/a CC Communications, Inc., is DENIED due to lack of jurisdiction by this Commission over Churchill County Telephone Company d/b/a CC Communications, Inc.
2. The Commission retains jurisdiction for the purpose of correcting any errors which may have occurred in the drafting or issuance of this Order.

By the Commission,


DONALD L. SODERBERG, Chairman

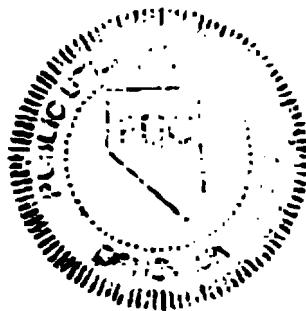

RICHARD M. MCINTIRE, Commissioner

Attest: Crystal Jackson
CRYSTAL JACKSON, Commission Secretary

Dated: Carson City, Nevada

(SEAL)

11/20/00



Before the
Federal Communications Commission

In the Matter of) Docket Number
)
Virtual Hipster Corporation)
Petition for Preemption of)
Jurisdiction of the)
Public Utilities Commission of Nevada)
Pursuant to 47 U.S.C. § 252(e)(5))
)
)

Affidavit of Steven E. Tackes, Esq.

in support of Petition for Preemption of Jurisdiction of the

Public Utilities Commission of Nevada

Pursuant to 47 U.S.C. § 252(e)(5)

State of Nevada)
: ss
Carson City)

I, Steven E. Tackes, Esq., being first duly sworn, and under the penalties of perjury
hereby states and affirms as follows:

1. That Affiant is an attorney, licensed to practice in the State of Nevada and the Federal
Courts;

2. That Affiant represented the Petitioner in the underlying proceedings herein.

3. That Affiant has firsthand knowledge of the facts asserted in the attached Petition for
Preemption of Jurisdiction of the Public Utilities Commission of Nevada.

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1 4. That the facts asserted therein are true and correct to the best of my knowledge.

2 DATED this 30th day of November

3
4 

5 Steven E. Tackes, Esq.
6 Nevada Bar No. 1027
7 510 West Fourth St.
8 Carson City, NV 89703
9 (775) 882-1311

8 Subscribed and Sworn to
9 before me this 30th day
10 of Nevada, 2000.

11 
12 NOTARY PUBLIC (SEAL)

